

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

FIDELITY ENGINEERING CORPORATION

Employer

and

Case 5-RC-15864

LOCAL UNION NO. 486, PLUMBERS
AND STEAMFITTERS OF BALTIMORE,
MARYLAND, A/W UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPEFITTING INDUSTRY OF
THE UNITED STATES AND CANADA

Petitioner

DECISION AND DIRECTION OF ELECTION

The issues in this proceeding are: (1) whether the petitioned-for unit is an appropriate craft unit; (2) whether employees working at the Employer's Ashburn, VA facility must be included in the unit; (3) whether three lead service technicians are supervisors within the meaning of the Act; (4) whether the foremen are supervisors within the meaning of the Act; (5) whether the drivers and employees employed in the Construction Division, Shop, and warehouse share such a close community of interest with the employees in the petitioned-for unit that they must be included in the bargaining unit; and (6) whether employee Victor Patasce should be excluded from the unit as not sharing a sufficient community of interest with the employees in the petitioned-for unit. There is no relevant history of collective bargaining.

The Petitioner ("Union") seeks to represent all full-time and regular part-time service technicians, control technicians, and apprentice service technicians employed by the Employer at the following Maryland locations: Sparks; Baltimore; Columbia; and Laurel.¹

¹ The petitioned-for unit originally included all full and regular part-time service technician journeymen and apprentices providing HVAC/R service and control work employed by the Employer at its Sparks Office, excluding all other employees, professional employees, office

The Petitioner contends that: (1) the petitioned-for unit, as amended, is an appropriate craft unit; (2) the scope of the petitioned-for unit, as amended, involves a presumptively appropriate single facility unit, and the Employer has failed to rebut that presumption; (3) the service installers, drivers, and employees employed in the Construction Division, shop, and warehouse do not share such a close community of interest with the employees in the petitioned-for unit to mandate their inclusion in the bargaining unit; (4) the three lead service technicians and foremen are supervisors within the meaning of the Act;² and (5) Victor Patasce should not be included in the unit because he is an electronics technician who repairs electronics equipment, but is not required to possess a HVAC/R mechanic's license and does not report to HVAC supervision. Therefore, Patasce does not share a community of interest with the petitioned-for unit. There are approximately 47 service technicians, control technicians, and apprentice service technicians in the petitioned-for unit.

The Employer does not take issue with the inclusion of full-time and regular part-time service technicians and apprentices providing HVAC/R service and control work employed by the Employer at the locations being sought by the Petitioner. However, the Employer maintains that the sole appropriate unit must include all service technicians, including lead technicians, service installers, control technicians, foremen, construction installers, warehouse laborers, warehouse drivers, fabrication workers, and parts employees that work at all of the Employer's work sites/facilities in the Maryland/D.C./Northern Virginia area, including: Sparks, Maryland; Baltimore, Maryland; Columbia, Maryland; Laurel, Maryland; and Ashburn, Virginia. The Employer contends that the employees in its proposed unit perform functionally integrated work with overlapping job duties, and are assigned work according to operational needs, rather than basing it on craft or on work situs. The Employer further contends that these employees all share common interests, working conditions, and benefits in a manner so substantial as to eliminate the separate identity of any of these offices or work locations given the following: the Employer's centralized control over daily operations and labor relations; the similarity of skills and functions

clericals, guards, supervisors as defined in the Act, and construction, service install, and generator department employees. At hearing, the Petitioner amended the unit to include a total of 47 service technicians, control technicians, and apprentice service technicians, employed in Sparks, Baltimore, Laurel, and Columbia, Maryland.

² Although raised at hearing, this issue was not addressed by the Petitioner in its brief.

at each of the offices; and degree of employee interchange and interaction among the above offices and departments.³

The Petitioner stated at hearing that it is prepared to proceed to an election in any unit found appropriate by the Regional Director.

I have carefully considered the evidence and arguments presented by the parties on these issues. As discussed below, I find that the petitioned-for unit is an appropriate unit. Additionally, I find that the foremen and lead technicians are not supervisors within the meaning of the Act and thus should be included in the unit. With regard to Victor Patasce, I find that the record is unclear as to whether he shares a community of interest with the other employees included in the unit found appropriate. Therefore, I determine that he should vote under challenge.

³ The parties agree that the unit being sought by the Petitioner – service technicians, control technicians, and apprentice service technicians, employed in Sparks, Laurel, and Columbia – consists of approximately 47 employees. The parties further agreed that an appropriate unit should include at least these 47 employees, but exclude all generator department employees, sales employees, office clerical employees, professional employees, guards, and supervisors as defined by the Act. The Employer's proposed unit, comprised of approximately 183 employees, is considerably broader, and consists of the petitioned-for employees as well as lead service technicians, the service department and warehouse employees, the Construction Division employees, the Ashburn Division employees, and foremen.

At hearing, the parties agreed to exclude the following classifications: all Generator Department employees including those working in Richmond, Virginia; sales employees; office clerical employees; professional employees; guards; and supervisors as defined in the Act. Bernadette Scarborough was stipulated to be an excluded office clerical employee. The following individuals are stipulated statutory supervisors: Rick Conway; Rich Dalton; John Peach; Eric Uhler; Dave Duncan; Jesse Wentz; Chuck Neukam; and Alex Sokal. The parties further stipulated that the following individuals are managerial employees and, therefore, should be excluded from any unit found appropriate by the Regional Director: Thorne Gould; Wayne Aldridge; Jirair Gharakhanian; Jim Slechta; David Hall; David Chiasson; Edward Fruhling; Craig Russell; Tom Beard; and Carmine Mistichelli. Finally, the parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act and should, therefore, be excluded from any unit found appropriate: Rocky Whipperman; Andrew Robertson; Tony Hernandez; Uwe Neuman; Tom Bonds; Mike Tereo; Larry Eckhart; Charles Frase; and Roland Krach.

The Employer presented testimony from Carmine Mistichelli, regional director of the Employer's HVAC Division. The Petitioner presented testimony from Edmund Timothy Moore, HVAC service technician.

FACTUAL SETTING

The Employer is in the business of designing, installing, and servicing HVAC equipment, ranging from small to large systems located throughout the Baltimore/Washington metropolitan area. It also provides and services controls in automated energy management systems. The work it performs for its customers, both public and private, is commercial and industrial. The Employer is comprised of 4 divisions: Division 1 - Construction; Division 2 – Service; Division 3 – Generator Department; and Division 5 – Ashburn, Virginia.⁴

HVAC regional director Carmine Mistichelli, who began with the Employer as a field service technician, testified about the various work locations of the Employer's employees as well as their functions. In Division 1 (Construction), the work generally involves the initial installation of HVAC systems for new construction that is being built.⁵ Approximately 17 foremen, 7 installers (HVAC pipe), 4 installer apprentices⁶ (HVAC pipe), 4 helpers (HVAC pipe), 12 installer plumbing employees, 7 installer apprentices (plumbing), 3 helpers (pipe), 20 installers (HVAC), 4 installer apprentices (HVAC), 6 helpers (HVAC), 2 shop employees, and 2 mechanics are based out of this division. General superintendent Tom Beard oversees the foremen, technician installers, and apprentice helpers. A group of "startup" technicians are assigned the task of starting up newly installed units, a duty not performed by installation technicians as it is not within the installation technicians' duties to perform this task. The Construction Division also includes three drivers, who spend about 90% of their time on the road delivering the fabricated materials and tools needed for projects from the warehouse to the field.

⁴ There is no Division 4.

⁵ The Construction Division is headed by operations manager Craig Russell, who splits his time between the Sparks office (80%), the field (15%) and Ashburn (5%). Reporting to Russell is general superintendent Tom Beard. Below Beard is another level of supervision that oversees foremen, technician installers, and apprentice helpers in construction.

⁶ Apprentices are in a HVAC/R apprenticeship program. Plumbing apprentices are in a different program geared towards plumbing.

Drivers also retrieve and return tools and unused material from the field to the warehouse. One sole laborer works in the warehouse performing miscellaneous tasks such as cleaning the warehouse. The four warehouse employees (three drivers and one laborer) report to warehouse manager Roland Krach.

In Division 2 (Service), the work principally involves the repairing, replacing, or retrofitting of already existing HVAC systems, as well as preventative maintenance. There are four departments within this Division: (1) Field; (2) Control; (3) Project Group; and (4) Chiller Plant. Field service technicians are primarily responsible for performing this work and report to Field supervisor Larry Eckhart. Control technicians and apprentices in the Control department report to Control manager Mike Tereo. Control technicians become involved in the work of service technicians when a problem is identified by a field service technician as being related to the controls. In addition, they also provide preventative maintenance on such systems, respond to service calls, and perform software upgrades.

Technician installers and apprentices in the Project Group department report to Project Group manager Tom Bond and are primarily responsible for the same work as installers working in Division 1 (Construction) - installing new HVAC systems; however, the projects in Division 2 (Service), such as the emergency replacement of an older non-functioning rooftop unit compressor, are smaller in scale and typically involve a faster response and are shorter duration as compared to those in Division 1 (Construction).

As discussed above, field service technicians service, troubleshoot, and repair HVAC equipment. They are assigned accounts, typically the result of maintenance agreements. In servicing such accounts, they perform regularly scheduled inspections of equipment and make sure that the equipment is operating up to standards. When they encounter problems with a system, they are trained to repair the equipment, which can involve replacing broken belts, removing clogged air filters, replacing thermostats, removing or replacing compressors, or replacing parts of refrigeration systems, control and circuit boards. Regional director Mistichelli, who at one time directly supervised this group, testified that these technicians also perform sheet metal repairs, piping repairs, and installation work.

Field service technician Edmund Timothy Moore, who testified at hearing on behalf of the Petitioner, distinguished the technician/installers' duties from those of the field service technicians' by explaining that the former group's specialty involves the installation of the equipment in accordance with required codes regarding proper installation, while the latter group's responsibility is to verify that the equipment operates correctly. Moore further testified that there is only infrequent interaction between field service technicians and technician/installers. Moore further testified that he does not work with the installation crew in installing new HVAC systems because it is not his "field" or "skill."

All human resources, accounting, and payroll⁷ functions for the Employer's entire operation are performed at its Sparks, Maryland facility.⁸ The shop and warehouse are both located in Sparks, where fabrication orders are taken and processed for all four divisions.⁹ This is also where the parts department is located. The parts department, headed by shop foreman Charles Frase, is responsible for pulling tools for the various worksites located throughout the Virginia, DC, and Maryland region in response to requests from supervisors.

The Chiller Plant department is the fourth department in the Service Division. The Chiller Plant group is headed by supervisor Uwe Neuman, who oversees the work of five service technicians and one apprentice, whose primary function involves work on chilling equipment, absorption machines, and larger heating machines. Mistichelli testified that these employees also perform work on non-chiller equipment and tasks such as those performed by field service

⁷ There is only one payroll system for all of the Employer's employees. Paychecks are prepared in the human resources department in Sparks.

⁸ With respect to hiring, the record revealed that prospective employees may apply at either Sparks or Ashburn, where local management at these facilities accepts applications. The application is then forwarded to the human resources department in Sparks for appropriate processing. Regional director Mistichelli testified that he would at that point get involved in the hiring process. A uniform "New Hire Orientation Check List" is utilized by human resources personnel in all cases of new hires.

⁹ While there are some field employees based out of the Sparks location, they do not report there. Rather, the record revealed that they report directly to the site to which they are assigned. These assignments are made the day before by general superintendent Tom Beard, who calls them on a Nextel phone, which all employees have.

technicians and technician/installers. Most of the larger chilling machines are located in the D.C. area. Consequently, Neuman, who spends the majority of his time in the Sparks facility, also reports to other areas, including Ashburn, where he works closely with field supervisor Andrew Robertson, who is based out of the Ashburn office.

In Division 5 (Ashburn), there are three departments: control, field, and project. The Ashburn control department includes one control technician and one supervisor, Tony Hernandez; the Ashburn field department includes 9 field service technicians and one supervisor, Andrew Robertson; and the project department involves one supervisor, Rocky Whipperman, one foreman, 11 technician/installers; and 4 installer apprentices.

In addition to the Sparks and Ashburn facilities, the Employer stations employees at three other sites. One full-time lead technician and a part-time technician spend 100% of their time at the work situs of the Washington Sanitary Suburban Company's complex in Laurel, Maryland, providing HVAC service at this facility, including the maintenance and installation of HVAC systems. An office at this location is used by these employees to handle and process paperwork, documents, faxes, communications, electronic communications, files, and work tickets.

Another work situs, in Baltimore, Maryland, also is devoted to one single client, the University of Baltimore. Three service technicians are stationed there, where they spend 100% of their time at this facility providing HVAC services to this sole customer. Service technicians at this site have access to a desk for completing necessary paperwork.

A Columbia, Maryland work situs was originally established in 1999 to service a single customer that now has eight buildings. The Employer uses an office at this customer's facility which contains a facsimile machine and a computer system. As of the hearing, there the Employer was servicing approximately 10 different customers located in the surrounding area of this office. Four service technicians are stationed in this office.

Unlike the Sparks and Ashburn offices, no supervisors are assigned to work in Laurel, Baltimore, or Columbia. Rather, the employees working at these sites report to Field Service

supervisor Larry Eckhart, who spends about 80% of his time in his office located in Sparks and about 20% of his time in the field. Organizationally, employees working at the Laurel, Baltimore, and Columbia sites are considered to be Sparks employees.

As noted above, Mistichelli is responsible for directing the entire region. In turn, Mistichelli reports to Chief Operating Officer Jirair Gharakhanian, whose office also is located in Sparks, Maryland. Mistichelli spends approximately 50% of his time in his office located at the Sparks facility, approximately 40% of his time at the Ashburn, Virginia location, and approximately 10% of his time in the field.¹⁰ Construction Division general superintendent Tom Beard does not have his own office, but divides his time as follows: approximately 80% of his time spent in the field, including about 5% of his time spent in Ashburn; and 20% spent in the Sparks office.

Once a new HVAC system is designed, the general superintendent reviews the blueprints and other documents to determine how it should be installed. The superintendent engages in discussions concerning the project with the customer, his supervisors, and the foreman assigned to the project. The fabrication shop begins constructing whatever is needed for a particular installation job such as piping, sheet metal, regular steel, and stands. Once the necessary material is constructed by the fabrication shop, delivery drivers deliver these materials, as well as any necessary tools, to the jobsite. As referenced above, according to Mistichelli's testimony, there is no difference between the actual work performed by the Construction Division's installers and the Project Group's installers.¹¹ Mistichelli explained that these two groups report to different supervisors because of the difference in project size and business volume. Mistichelli further testified that Project Group installers have "nothing to do with HVAC Services" and are not certified HVAC technicians.

¹⁰ At hearing, the parties agreed that the Sparks facility is approximately 34.1 miles from Columbia; 19.3 miles to the University of Baltimore; 42 miles from Laurel; and 82.7 miles from the Ashburn facility. It is approximately 66.9 miles from the Ashburn facility to the Baltimore office, and approximately 41.8 miles from the Ashburn office to Laurel.

¹¹ As noted above, the Petitioner seeks to exclude both types of installation technicians from the unit.

Installers install new equipment; however, Construction Division startup technicians perform the startups on this equipment, which entails ensuring that the systems are wired properly and, if there are refrigerant lines, that these systems are being evacuated properly, and generally making sure that the systems and equipment are functioning properly. The record revealed that in about 2001 or 2002, a group of startup technicians was created¹² and, as a result, four field service technicians were transferred from the Service Division to the Construction Division. Following the installation and the startup process, a warranty process begins, which generally lasts one year.

According to Mistichelli's testimony, field service technicians regularly interact with other individuals within the organization, including construction personnel. In addition, startup technicians frequently interact with other employees in the Construction Division due to the complexity of the projects and systems installed. Typically this interaction is in person; however, all employees and supervisors have Nextel phones.

At hearing, examples were provided demonstrating situations where field service technicians worked on installation jobs, where they occasionally performed similar duties to the installation technicians. Mistichelli testified that the field service technicians perform the same work performed by service installers approximately 35% of the time. According to Mistichelli's estimates, this occurs on a weekly basis. Also on a weekly basis, service installers are utilized to perform preventative maintenance, which is also performed by field service technicians. Service installers interact with service technicians on a daily basis. Maryland service technicians also perform work on construction projects on a daily basis.

In asserting that job assignments are made to jobsites throughout the entire region, irrespective of whether the employee assigned to such work is based out of Virginia or Maryland, Mistichelli estimated that on a weekly basis, Virginia-based technicians work on Maryland-based projects and Maryland-based technicians work on Virginia-based projects. For

¹² In creating the startup group, the Employer determined that it would ensure expeditious service of customers' needs to have these technicians work within the entire construction division.

instance, on a particularly critical job that lasted from January to July of 2004 involving the installation of a cooling tower, employees from the Maryland Construction and Service Divisions were utilized, as well as from the Virginia Service Division even though the project technically pertained to the Virginia Service Division. In another job, located in Washington, D.C., which technically falls under the Ashburn office, a large piece of equipment with ductwork was being installed. This work, which is still ongoing, required fabrication by the shop at Sparks, and utilized construction, install, and service technicians from the Maryland Construction Division.

With respect to jobs involving retrofits and the necessary replacement of equipment, the Employer assigns such tasks to whoever is available. Consequently, such work is performed by sheet metal mechanics, service technicians, pipefitters, and control technicians. However, while it is not the case that there are certain jobs or assignments that can only be specifically assigned to an installer or service technician, Mistichelli conceded that some assignments, such as drilling holes or ductwork, are typically assigned to an installer rather than a technician. Moreover, the record evidence indicates that these classifications possess certain distinctive skills and utilize different tools.

The average hourly wage rate for Construction installers is \$20.89¹³ and the average hourly rate for Construction foremen is \$23.43. The average hourly wage rate for Service installers is \$21.04 while the average hourly rate for field service technicians is \$23.80. Finally, control technicians earn an hourly rate, on average, of \$26.68. The Employer's employees all receive the same benefits, and there is no distinction between benefits or wages based on whether an employee works based out of Maryland or Virginia.

All employees in the above divisions and classifications receive the same employee

¹³ At hearing, regional director Mistichelli was unable to provide the range of hourly rates for each of the classifications. Nor was such information presented by the Employer at any time during the hearing.

handbook which applies to all offices, jobsites, and classifications. Employees attend training sessions without regard to whether they are employed out of the sparks or Ashburn facilities. In addition, all employees attend company-wide safety training.

A license is required to service an HVAC/R (heating, ventilation, air conditioning, and refrigeration) systems in the State of Maryland. Field service technician Edmund Timothy Moore testified that he has a Maryland journeyman's license, and a CFC certification by the Environmental Protection Agency for handling refrigerants. There was testimony in the record that the licensing requirements for Virginia are different in that it does not require technicians to be licensed.¹⁴ While the Employer does not require Virginia-based service technicians to have Maryland HVAC licenses, some do possess such licenses.

Foremen

There are approximately 17 foremen in the various departments and divisions; they report to department supervisors. Petitioner contends foremen within the petitioned for departments are statutory supervisors. Regional director Mistichelli was the only witness to give testimony about the specific authority that foremen possess. He testified that they do not have the authority to hire, transfer, suspend, layoff, recall from layoff, discharge, promote, reward, discipline, direct the work of employees by using independent judgment, adjust grievances, or effectively recommend any such actions. While Mistichelli testified that the foremen can discuss with supervisors matters affecting the projects, such as where employees should be assigned and how jobs should be run, he knew of no specific instance in which such discussions occurred. Nor could Mistichelli cite any examples in which the foremen made effective recommendations regarding an employee.

Lead Technicians

¹⁴ In its post-hearing brief, however, Petitioner cites pertinent Virginia and District of Columbia regulations for the proposition that such licensing is, in fact, required. Va.Reg. Reg. 18 VAC 50-30-20 and 50-30-190(15) (2005) and D.C. Mun. Regs. Tit. 17 Sections 303.1, 303.7 (2001).

There are approximately three lead service technicians employed in the Sparks, Baltimore, Laurel, and Columbia work locations: Tom Campbell; Jerry Hartridge; and Richard Mafoe. These individuals work on HVAC equipment in the same manner as field service technicians. Again, regional director Mistichelli testified that the lead technicians do not have the authority to hire, fire, transfer, suspend, layoff, recall from layoff, promote, reward, evaluate, or discipline employees. Nor do they have the authority to effectively recommend any of these things. Mistichelli further testified that they do not use independent judgment in assigning work or directing the work of other employees. According to field service technician Moore's testimony, the lead technicians wear a different uniform as Moore. The record is devoid of any evidence demonstrating that lead technicians exercised any of the above supervisory authority, effectively recommended such actions, or assigned or directed work based on independent judgment.

Analysis: The Appropriateness of the Petitioned-For Unit

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof...." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board has long held that a single-location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Id.* at 41. The factors that the Board examines in making this determination are: centralized control over daily operations and labor relations; extent of local autonomy; similarity of skills, functions, and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Rental Uniform Service*, 330 NLRB 334 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

I conclude that the evidence fails to satisfy the Employer’s burden in overcoming the presumptive appropriateness of the petitioned-for unit’s scope. Although it is correct that the Petitioner expanded its petitioned-for unit by agreeing at hearing to include the field service technicians working in Columbia, Baltimore, and Laurel, the evidence demonstrates that these sites are not facilities, but rather work sites or job assignment locations to which the employees are assigned, where they spend 100% of their time to service specific customers located at or near such locations. As noted above, the supervision for these locations is based out of Sparks, unlike the Ashburn office, which has its own supervision. Similarly, the Employer’s own organizational charts includes these employees as Sparks, Division 2 employees. Thus, contrary to the arguments raised by the Employer on brief, it cannot be concluded that the Petitioner has sought to represent employees in multiple facilities; rather, it has sought to represent a unit of only one facility, Sparks, together with certain Sparks employees assigned to job locations in Laurel, Baltimore, and Columbia.

In applying the single-facility presumption to the instant facts, while the record reveals that there is evidence of limited interchange between the Maryland-based and Virginia-based offices, common working conditions, uniform work rules and benefits, and centralized labor relations, I conclude that the totality of the record evidence is insufficient to overcome the presumptive appropriateness of the Petitioner's unit, especially given the local autonomy and separate supervision that exists in both the Sparks and Ashburn locations. Multiple levels of supervision exist at each of these two offices, the Employer's only two facilities at issue in this proceeding. While there may be some limited interaction between the Sparks-based and Ashburn-based employees, especially in the case of larger projects requiring greater numbers of workers, this evidence was presented in aggregate form, or through Mistichelli's conclusory testimony, and lacked any context whatsoever as to the number of total hours, shifts, or days the employees worked at other locations. For example, while at times employees worked in other divisions, the record lacks the requisite comparison figures to determine the level or frequency of such interchange. The presumption of the appropriateness of a single-facility unit has not been rebutted where an employer's interchange data is represented in aggregate or anecdotal form rather than as a percentage of total employees. *New Britain Transportation*, 330 NLRB at 400, citing *Dunbar Armored, Inc. v. NLRB*, 186 F.3d 844, 849 fn. 5 (7th Cir. 1999).

The record evidence also fails to establish a lack of local autonomy at either Sparks or Ashburn. Rather, there is separate immediate supervision and significant day-to-day control over supervision. See, *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999). The record in the instant case establishes that while there is centralized involvement with regard to hiring at the latter stages, which includes following uniform hiring procedures, employees may apply at either Sparks or Ashburn.

In arguing that a functional integration between the two facilities is so substantial as to negate the separate identity of a single-facility, on brief the Employer relies on *Trane*, 339 NLRB 866, 867 (2003). In that case, the Board reversed a Regional Director's decision that the employer had failed to present sufficient evidence to rebut the single-facility presumption, and concluded that the Regional Director had placed too much emphasis on the lack of employee interchange and geographic distance between the two facilities. *Id.* In *Trane*, the Board held that

the 108 miles between the two facilities was made less significant by the fact that the employees were dispatched from their homes and that the two areas were “only loosely defined by fluid lines of demarcation.” *Id.* In reversing the Regional Director, the Board concluded that the employees possessed identical skills, performed identical functions, labored under identical work conditions and, importantly, that “all supervisory functions” for both facilities were centralized at one office. *Id.* at 867. The “complete absence of any separate supervision or other oversight” at the second facility was noted as a significant factor in the Board’s decision. *Id.*

By contrast, the facts of the instant case are clearly distinguishable from the facts of *Trane* in that separate supervision and a degree of local autonomy exists at both the Sparks and Ashburn facilities. Moreover, there is insufficient interchange and a greater degree of separation between the two areas serviced. Thus, *Trane* is distinguishable from the instant case. In view of the separate supervision and autonomy at the Sparks and Ashburn facilities, and the insufficiency of the Employer’s evidence with regard to interchange as noted above, I conclude that the evidence fails to rebut the presumption of the single-facility unit.

Even assuming that the Columbia, Baltimore, and Laurel sites constitute “facilities,” and therefore the single-facility presumption is not the appropriate test, I would still conclude that the Petitioner’s petitioned-for unit is an appropriate unit. In so finding, I note that the classifications being sought by the Petitioner comprise a readily identifiable group with common interests apart from the classifications that the Employer is attempting to include. For instance, I note that there is separate immediate supervision, as well as insufficient evidence of interchange, cross-training, contact, or functional integration between the petitioned-for classifications – field service and control technicians and apprentices employed at Sparks – and the Construction Division installers employed at Sparks. While there may be some overlapping of skills and abilities between these two groups, the evidence established that the field service technicians, control technicians, and apprentices being sought by the Petitioner spend a substantial majority of their time performing duties distinctive from those of the installer technicians, possess different skills and special licensing, and utilize different tools. In these circumstances, the evidence is insufficient to render the Petitioner’s unit inappropriate. See, *United Operations Inc.*, 338 NLRB 123 (2002), citing, *inter alia*, *Dick Kelchner Excavating Co*, 236 NLRB 1414 (1978).

Accordingly, I find that the field service technicians, apprentice technicians, and control technicians and apprentices employed at the Employer's Sparks, Maryland facility constitute an appropriate unit.

Analysis: Supervisory Issue

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1867 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

I find that Petitioner has not met its burden of establishing that the lead technicians or foremen are supervisors. While Moore testified that such individuals may wear different uniforms or drive different vehicles than himself, the record is totally devoid of any evidence that these individuals possess any of the enumerated indicia of supervisory status in Section 2(11) of the Act. It is well established that absent such evidence of supervisory status, secondary indicia is not relevant as it alone will not support a finding of supervisory status. *Housner Hard-Crome of KY, Inc.* 326 NLRB 426, 427 (1998).

Based on the foregoing, I find that Petitioner, as the party asserting supervisory status, has not met its burden in proving that the foremen or lead technicians have the authority to hire, fire, discipline, evaluate, assign or responsibly direct other employees, or carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. *Kentucky River Community Care*, 121 S.Ct at 1867. Therefore, I find that the foremen and lead technicians are not supervisors within the meaning of Section 2(11) of the Act. Accordingly, I will include foremen and lead technicians in the unit.

Unit Placement of Victor Patasce

Service technician Edmund Timothy Moore gave limited testimony with regard to Victor Patasce, who the Petitioner contends has been mislabeled as a field service technician. Moore testified that although Victor Patasce is listed in the Employer's records as a technician, Patasce does not work as a field service technician. Rather, he works as an electronics technician and reports directly to Service Division manager Ed Fruhling, as opposed to Moore's supervisor,

field supervisor Larry Eckhart or another departmental supervisor. Moore further explained that when he is on a service call and needs expertise in the area of circuit boards or variable frequency drives, he seeks Patasce's assistance through Fruhling. No one else provides the type of work that Patasce performs, according to Moore's testimony.

I find that the record is unclear as to whether Patasce shares a community of interest with the other employees included in the unit found appropriate. Therefore, I determine that he should vote under challenge.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner, Local Union No. 486, Plumbers and Steamfitters of Baltimore, Maryland, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated that Fidelity Engineering Corp., a Maryland corporation with a facility located in Sparks, Maryland, is engaged in the business of designing, installing, and servicing HVAC equipment at various locations in Maryland, D.C. and Virginia. During the

past 12 months, a representative period, the Employer purchased and received at its Sparks, Maryland facility, goods valued in excess of \$50,000 directly from points outside the State of Maryland.

6. There is no relevant history of collective bargaining for any of the Employer's employees.

7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field service technicians, control technicians, foremen, lead service technicians, apprentice service technicians, and apprentice control technicians employed in Sparks, Baltimore, Laurel, and Columbia, Maryland; but excluding all other employees, generator department employees, sales employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Since the unit that I find appropriate is broader than the petitioned-for unit, the Petitioner is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Petitioner not wish to proceed to an election in the broader unit it will be permitted, upon request, to withdraw its petition without prejudice.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **LOCAL UNION NO. 486, PLUMBERS AND STEAMFITTERS OF BALTIMORE, MARYLAND**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **June 2, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D. Notice of Electronic Filing

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **June 9, 2005**. The request may not be filed by facsimile.

(SEAL)

WAYNE R. GOLD

Dated: May 26, 2005

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5